IN THE HIGH COURT OF JUDICATURE AT PATNA
Cr.Misc. No.11398 of 2006
MD.ATIKUR RAHMAN & ORS
Versus
STATE OF BIHAR & ORS
---

6 4.8.2008 Heard Dr. Shashi K. Kishore, the learned counsel for the petitioners, Sri Anil Kumar, the learned counsel for O.P. Nos. 2 to 5 and Sri Jharkhandi Upadhaya, the learned A.P.P. for the State.

The petitioners who are the members of the second party in a proceeding under section 145 Cr.P.C., being Case No. 163 M of 1998 before the learned Sub – Divisional Magistrate, Kishangunj, have prayed for quashing of the order dated 30.1.2006 passed by the learned Additional Sessions Judge, Kishangunj, in Cr. Revision No. 28 of 2003 whereby he has set aside the order dated 24.11.2001 of the learned Sub – Divisional Magistrate, Kishangunj in the aforesaid 145 Cr.P.C. proceeding declaring possession of these petitioners over the lands in question.

WEB COPY NOT OFFICIAL

The reasons for setting aside the order of the learned Magistrate is available in paragraph 7 of the order of the revisional court which reads as follows:

> "Clearly the impugned order is not based on the basis of the evidence recorded on behalf of both sides, rather the order is based on the basis of the report of the Circle Officer which has not been exhibited in the case and the members of the first party was not given opportunity to rebut these documents as the same has not been marked exhibit …..".

The learned counsel for the petitioners, notwithstanding

his best efforts, was not in a position to show any illegality or impropriety in the said order. His only submission was that the order of the learned Magistrate was primarily based on the report of the Circle Officer, which he had furnished. But this report of the Circle Officer had not been exhibited and in the absence thereof the learned Magistrate could not have placed reliance thereupon.

There is another aspect of the matter. The proceeding was initiated in the year 1998 and the order of the Magistrate was passed on 24.11.2001, i.e. after three years. The continuance of a proceeding under section 145 Cr.P.C. for a long time betrays the basic structure of the proceeding which is to prevent apprehension of breach of peace. It is doubtful if such apprehension could carry on for three years without there being any commission of any overt act.

I find no merit in this application which is dismissed.

WEB COPY NOT OFFICIAL

Spd/- **(Abhijit Sinha, J.)**